

M626AVIS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 CR 374 (JMF)
Sentence

5 MICHAEL AVENATTI,

6 Defendant.

7 -----x
8 New York, N.Y.
9 June 2, 2022
10:00 a.m.

Before:

11 HON. JESSE M. FURMAN,

District Judge

12 APPEARANCES

13
14 DAMIAN WILLIAMS,
15 United States Attorney for the
16 Southern District of New York
BY: MATTHEW D. PODOLSKY
ANDREW ROHRBACH
Assistant United States Attorneys

17
18 DAVID PATTON
FEDERAL DEFENDERS OF NEW YORK, INC.
Attorneys for Defendant
19 BY: ROBERT M. BAUM
TAMARA GIWA
20 MALINI MALHOTRA

21 BREWSTER & DE ANGELIS, P.L.L.C.
Attorney for Defendant Interested Party
22 BY: CLARK O. BREWSTER

23 Also Present:
Special Agent DeLeassa Penland
24 Emily Abrams, USAO Paralegal
25 Juliet Vicari, Paralegal

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(Case called)

DEPUTY CLERK: Counsel, please state your name for the record.

MR. PODOLSKY: Good morning, your Honor.

Matthew Podolsky and Andrew Rohrbach for the government. We're joined at counsel table by Special Agent DeLeassa Penland, and Emily Abrams, a paralegal with our office.

THE COURT: Good morning.

MR. BAUM: Good morning, your Honor.

Robert M. Baum, and we have Michael Avenatti.

THE COURT: Can you just speak into the microphone, Mr. Baum?

MR. BAUM: Thank you. Robert M. Baum. I don't know if this is on, Judge. Judge, you know about my technical skills. You've seen it in action.

THE COURT: I think I've even taught you something about texting and swiping. Anyway...

MR. BAUM: That's what I'm talking about.

Robert M. Baum on behalf of Michael Avenatti. And I'm joined by my co-counsel, Tamara Giwa. And I'm also joined by another attorney to my far left, Malini Malhotra, and my paralegal Juliet Vicari.

Good morning, your Honor.

THE COURT: Good morning to all of you. You may be

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1 seated.

2 I recently tested negative for COVID-19, and our rules
3 allow me to unmask on the bench, so I will take advantage of
4 that.

5 We're here for purposes of sentencing. In preparation
6 for today's proceeding, I have reviewed the presentence report
7 dated May 3, 2022. I've also received and reviewed the
8 following additional submissions: First, the defendant's
9 submission dated May 19, 2022, as well as the attachments to
10 that submission, which include a DOJ press release, an ABA
11 report of reform of the fraud guideline, letters addressed to
12 me from the defendant's ex-wife, his daughters, his ex-brother
13 and sister-in-law, and a friend; and a letter written by the
14 defendant to Ms. Daniels. I've also received and reviewed the
15 government's submission dated May 26, 2022. And for what it's
16 worth, I've also read the transcript of Mr. Avenatti's
17 sentencing before Judge Gardaphe.

18 First, have the parties each received the other's
19 submissions in unredacted form?

20 MR. PODOLSKY: We have, your Honor.

21 MR. BAUM: We have, your Honor.

22 THE COURT: Just to underscore, we have an overflow
23 courtroom, there's also a press feed, so please make sure you
24 speak directly into the microphones to ensure that everybody
25 can hear.

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1 And are there any additional submissions that I should
2 have received?

3 MR. PODOLSKY: Not from the government, your Honor.

4 MR. BAUM: Not from the defense, your Honor.

5 THE COURT: All right. I have reviewed the proposed
6 redactions to the defense submission. I find that they are
7 justified on the basis of principally the privacy interests of
8 third parties, and they are narrowly tailored to that
9 justification, so I will approve those.

10 Mr. Podolsky, can you confirm? My understanding is
11 that Ms. Daniels' lawyer may be here to speak on her behalf; is
12 that correct?

13 MR. PODOLSKY: That is right. Mr. Brewster,
14 Clark Brewster, is in attendance, and I believe wishes to relay
15 a statement or a comment from Ms. Daniels.

16 THE COURT: All right. And, obviously, that does mean
17 that she has notice of this proceeding.

18 Mr. Brewster, I'll give you an opportunity to be heard
19 later in this proceeding.

20 Turning to the presentence report, Mr. Baum, have you
21 reviewed the presentence report? Use the microphone.

22 MR. BAUM: Yes, I have, your Honor.

23 THE COURT: And have you reviewed it and discussed it
24 with Mr. Avenatti?

25 MR. BAUM: We have, your Honor.

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1 THE COURT: All right. And, Mr. Avenatti, have you
2 reviewed the presentence report?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And did you have enough time to go over
5 the report and to discuss with your lawyers anything and
6 everything you would wish to bring to my attention in
7 connection with your sentencing?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: All right. And, Mr. Baum, I will make the
10 corrections that you request at Pages 11 and 12 of your
11 sentencing submission, to which the government has indicated in
12 Footnote 3 of its submission, does not object.

13 Putting aside those and putting aside the guidelines
14 for a moment, any other objections or corrections?

15 MR. BAUM: Of course we are prepared to discuss our
16 objections to the guidelines calculation, but there is one
17 additional objection, which, unfortunately, we didn't raise
18 with the Court in our sentencing submission because, at the
19 time, we did not have an opportunity to talk to Mr. Avenatti –
20 he was in transit – until after the sentencing submission was
21 due.

22 We do object to one of the special conditions
23 recommended by probation, and that is the special conditions
24 related to a search. We are prepared to provide the Court with
25 our reasons.

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1 THE COURT: All right. So I'll give you an
2 opportunity to be heard on that.

3 Mr. Podolsky, have you reviewed the presentence
4 report?

5 MR. PODOLSKY: We have, your Honor.

6 THE COURT: And putting aside the guidelines, any
7 objections or corrections to the factual recitation?

8 MR. PODOLSKY: No, your Honor.

9 THE COURT: Hearing no other objections, I will adopt
10 the factual recitations set forth in the presentence report as
11 modified by the corrections at Pages 11 and 12 of the defense
12 submission. The presentence report will be made part of the
13 record in this matter and kept under seal. In the event of an
14 appeal, counsel on appeal may have access to the sealed report
15 without further application to me.

16 Turning, then, to the guidelines. As counsel are
17 aware, I'm not required to follow the guidelines in the wake of
18 *United States v. Booker*, but I am required to consider the
19 applicable guidelines range in imposing a reasonable sentence,
20 and must, therefore, accurately calculate the sentencing
21 guidelines range.

22 In this case, the presentence report calculates that
23 the total offense level is 21, criminal history category is II,
24 and the guidelines range with the 24-month consecutive sentence
25 required for Count Two is 65 to 75 months' imprisonment,

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1 supervised release range of one to three years, and a fine
2 range of 15,000 to \$595,000.

3 That calculation is based, in part, on probation's
4 conclusion that the loss amount for purposes of guidelines was
5 \$297,500 based on the third and fourth book payments that were
6 due to Ms. Daniels.

7 I understand in his sentencing submission,
8 Mr. Avenatti objects to that calculation on two grounds; first,
9 on the ground that he made Ms. Daniels whole with respect to
10 the third book payment as the evidence at trial made clear; and
11 second, in essence, based on the costs and expenses that he
12 incurred and the benefits that he allegedly bestowed on
13 Ms. Daniels in connection with his representation of her
14 generally, that, in essence, she got more than he took from
15 her. I reject both those arguments. They are both meritless.

16 First, with respect to the first argument about making
17 her whole, it's not clear that he, quote/unquote, returned the
18 money within the meaning of the applicable guideline note,
19 namely 3E(i)(II). The record at trial made clear that he used
20 the money that he took for his own purposes and paid
21 Ms. Daniels with other funds, which he had borrowed under false
22 pretenses from a third party. But, ultimately, I need not
23 decide that question, because even if the funds paid could be
24 deemed returned within the meaning of the applicable note, I
25 agree with the government that the evidence at trial was

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1 overwhelming, that Mr. Avenatti paid Ms. Daniels the equivalent
2 of the third book payment to forestall her imminent discovery
3 of his crime.

4 See Page 6 of the government's sentencing letter,
5 which marshals some of the relevant evidence at trial. And,
6 indeed, I think the evidence is clear that that is the only
7 reason Mr. Avenatti paid Ms. Daniels, let alone paid her at
8 that time.

9 The second argument I also find without merit.
10 Mr. Avenatti cites no authority, that I'm aware of, none that
11 supports a view of loss of the sort that he presents. Indeed,
12 what authority there is points in the opposite direction. See,
13 for example, *United States v. Byors*, 586 F.3d 222, 226 (2d Cir.
14 2009).

15 So the argument is not supported by law, nor is it
16 supported by logic. Mr. Avenatti got what he bargained for,
17 and then some. That is, he used his representation of
18 Ms. Daniels to get fame, notoriety, and money for himself.
19 Indeed, he secured his own book contract worth \$2 million.
20 Ultimately, he obviously didn't get paid that. But no doubt,
21 in large part based on his representation of her, he obtained
22 part of the fee that Mr. Janklow had received without
23 disclosing that to Ms. Daniels, so on and so forth. In other
24 words, he received substantial remuneration, financially, and
25 through exposure through his representation.

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1 Finally, I would note that there's no merit to the
2 suggestion made in Mr. Avenatti's sentencing memorandum that
3 the government conceded at trial that the loss amount was
4 \$148,750. A review of the relevant transcript page, 1525,
5 makes plain that that suggestion takes the government's comment
6 made as part of a discussion during the charge conference about
7 what would or would not constitute a defense completely out of
8 context. It's certainly not a concession regarding the loss
9 amount within the meaning of the guidelines, which was
10 obviously not an issue at that stage of the case.

11 Accordingly, for those reasons, I reject the
12 objections to the guidelines calculation that are set forth in
13 the defense submission.

14 The defense makes an additional argument about
15 downward departure under 4A1.3, which I'll address in short
16 order. But first let me check if there are any other
17 objections or corrections to the guidelines calculations set
18 forth in the presentence report.

19 Mr. Podolsky?

20 MR. PODOLSKY: No, your Honor.

21 THE COURT: Mr. Baum?

22 MR. BAUM: No others, Judge. But if I may, I'd like
23 to just add some additional arguments, and I will not repeat
24 anything you said --

25 THE COURT: You need the microphone. But if it's on

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1 the issues I just resolved, the answer is no.

2 MR. BAUM: It's to add something.

3 THE COURT: Do you want to use the podium?

4 MR. BAUM: Please. I have it.

5 THE COURT: Why don't you use the podium? Then you
6 can actually unmask, if you'd like.

7 MR. BAUM: Thank you, Judge. My point --

8 THE COURT: Hold on. You need to turn the microphone
9 on. Go ahead.

10 MR. BAUM: It looks like it's on, Judge.

11 THE COURT: Go ahead.

12 MR. BAUM: I'm not going to repeat anything that
13 you've already ruled on in terms of the arguments or the basis
14 for your ruling, but I would like to add something, which I
15 think it is important for the Court to consider.

16 First, your Honor just ruled that the fact that
17 Mr. Avenatti returned the money was not consistent with the
18 manner in which a return is required. The government argued
19 that it had to be the same money that was taken. I merely want
20 to point out two things:

21 One is that in the guidelines application note, there
22 was no reference to the definition of what the return would be.
23 And if the definition, as advocated by the government that it
24 had to be the same money, that easily could have been addressed
25 by the sentencing commission by way of explanation. Because it

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1 was not addressed, I think it's an indication that the broader
2 sense of money returned is not the identical funds that were
3 taken, since money is fungible, but basically the amount of the
4 money is the issue.

5 I would add one other factor to this, Judge. Clearly,
6 the government cited a case from the Third Department,
7 *United States v. Fumo*, 655 F.3d 288, for the proposition that
8 money returned must be the same money. I point out that there
9 is no corresponding law in the Second Circuit, that there's no
10 corresponding law in accord with that Third Circuit decision
11 from any other circuit. But the important thing about the
12 government citing *Fumo* is this:

13 That they cited *Fumo*, and by doing so, they concede
14 one of our other points. What do I mean? The government cited
15 *Fumo* for this issue that the return must be the same. But they
16 also cited *Fumo* for the proposition that either the defendant
17 had to return the money, or that the defendant had to provide
18 services in compensation other than money.

19 By making this argument and the reliance on *Fumo*, they
20 clearly have adopted the second prong of *Fumo*, which is that
21 services can serve as a credit against the loss, and this is
22 consistent with the guidelines note, that services can serve as
23 a credit for loss.

24 The Court remarked during the trial that the services
25 that Mr. Avenatti performed in relation to the book were

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1 substantial. We quoted the Court's comments in our sentencing
2 submission. Clearly, Mr. Avenatti provided services related
3 directly to the book, involving hundreds of hours of work in
4 all manners of services related to the negotiations and the
5 finalization of the book deal. And those services should be a
6 credit against the loss based not only on the government's
7 citation to *Fumo*, but on the application notes themselves.

8 And if the Court is relying on the fact that there can
9 be no credit for loss where the victim was either aware or
10 about to become aware of the loss, I merely point this out for
11 the Court, which I know the Court is probably aware of:

12 Mr. Avenatti is alleged to have taken the second payment and
13 paid it back. Now, Ms. Daniels had no knowledge of anything
14 about the second loss being stolen. She thought it was merely
15 late, and I believe that was the testimony.

16 But the interesting thing, which I want to point out
17 to the Court, is that Mr. Avenatti then is alleged to have
18 taken the third payment, and that was sometime after the second
19 payment. So there is no doubt that when the second payment was
20 taken, Ms. Daniels was not aware that anything was stolen
21 because she kept on asking about a third payment. And the
22 record at the trial reflects that Ms. Daniels did not become
23 aware that anything was stolen until almost six months later
24 when she contacted the publisher who told her that Mr. Avenatti
25 had received the second and third payments.

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1 So I think the idea that Mr. Avenatti cannot get a
2 credit for loss because it was either discovered or about to be
3 discovered is inconsistent with the evidence at the trial. So
4 on that basis, I'm asking you to reconsider your ruling.

5 THE COURT: All right. That request is denied.

6 First, I didn't reach the question of whether it
7 constituted a return within the meaning of the guidelines. I
8 adverted to that but said I didn't need to resolve it because I
9 did find that he paid her back when he had reason to believe
10 that his fraud would be discovered.

11 To the extent that Ms. Daniels believed the payment
12 was late, I think that was based on Mr. Avenatti's own false
13 statements to her and misimpression that he caused to her. And
14 I think the record is quite clear that she said she was going
15 to reach out to the publisher and/or agent directly, and it was
16 presumably that that prompted Mr. Avenatti to scramble in order
17 to find a source of funds to pay her that money back.

18 So, again, I'm not reaching the *Fumo* question, but
19 find on the basis of the relevant language and the note that it
20 doesn't apply here. With respect to the services, again, I
21 think Mr. Avenatti was handsomely compensated for his services,
22 both in kind and through various funds. But for reasons that
23 I've discussed at length elsewhere and at trial, there's no
24 basis to the argument that he was entitled on the basis of
25 whatever efforts he made on Ms. Daniels' behalf, to simply take

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1 her money, let alone lie to her in service of that. So
2 understood.

3 MR. BAUM: Thank you, Judge. And just to correct the
4 record, although in talking about the service, I focused on the
5 services provided for the book deal, we did allege in our
6 sentencing memorandum, and I would also note for the Court that
7 we also believed that he should receive a credit for loss for
8 all the legal services that he provided to Ms. Daniels.

9 THE COURT: All right. Thank you. I also think that
10 *Byors*, which I referenced before, stands for different
11 propositions.

12 Mr. Podolsky, is there anything you want to say on
13 these issues?

14 MR. PODOLSKY: No, your Honor. I think that, frankly,
15 defense counsel's interpretation of *Fumo* is incorrect, but I
16 don't think it's relevant to the decision at hand, so I don't
17 think there's any use in pursuing that issue.

18 THE COURT: All right. In light of the foregoing,
19 using the November 2021 edition of the guidelines, I accept and
20 adopt the guidelines calculation set forth in the presentence
21 report; that is, I find that the offense level is 21, criminal
22 history category is II, and the guidelines range, with the
23 24-month mandatory consecutive sentence for Count Two, is 65 to
24 75 months' imprisonment.

25 That brings me to the question of departures. In his

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1 sentencing submission, Mr. Avenatti argues that pursuant to
2 Section 4A1.3(b)(1) of the guidelines, I should downwardly
3 depart from criminal history category II to criminal history
4 category I because three criminal history categories
5 substantially overstates his record.

6 Mr. Baum, anything else you want to say on that score,
7 or do you rest on your written submission?

8 MR. BAUM: Judge, there is one additional thing I
9 would like to say on that score.

10 Aside from the fact that probation agrees with us that
11 a variance is warranted because criminal history overstates, we
12 do point out to the Court that Mr. Avenatti was being
13 investigated for the fraud and aggravated ID theft against
14 Stormy Daniels before he was arrested and charged with the Nike
15 case. The government, nevertheless, chose to prosecute him in
16 two separate prosecutions.

17 And as set forth, in our sentencing memorandum, while
18 we are not alleging that the government did it intentionally to
19 cause the issue, which we now raise with the Court, it had to
20 the same effect. By prosecuting him on two separate occasions,
21 they had the ability to now argue that he should be placed in
22 criminal history category III as opposed to category I or II.
23 And we believe that their strategic decision that led to this
24 should not be condoned by the Court. And probation, to some
25 degree, agrees with that assessment.

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1 THE COURT: Okay. And it seems to me that as the
2 government argues in its submission, that had the government
3 chosen to charge those two crimes together, or multiple crimes
4 together, that Mr. Avenatti almost certainly would have moved
5 for, and probably been granted, a severance since the Nike
6 conduct had absolutely nothing to do with the conduct at issue
7 here. So doesn't that somewhat undermine the argument?

8 MR. BAUM: It could undermine the argument, Judge.
9 But at the same time, counsel could have chosen to let both
10 trials proceed in the same indictment with the understanding
11 that the result of two separate trials could lead to a dramatic
12 change in the guidelines if he were convicted at one trial.

13 THE COURT: All right. Mr. Podolsky, anything else
14 you wish to say?

15 MR. PODOLSKY: Simply to say, as we allude to in our
16 submission, that the decision to charge Mr. Avenatti in two
17 separate indictments is not a strategic one; it was one to
18 follow the rules of criminal procedure, and, frankly, it's not
19 relevant to the analysis at issue today.

20 Other than that, we rely on our submission.

21 THE COURT: All right. So I'm obviously aware of my
22 authority to depart under 4A1.3 but find there's no basis to do
23 so here. There's no dispute that the Nike conviction is a
24 prior conviction within the meaning of the guidelines. It's
25 not relevant conduct with respect to this case within the

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1 meaning of the guidelines, which to say it's discrete criminal
2 conduct, and the defendant cites no authority other than the
3 guidelines provision itself to justify a departure in these
4 circumstances.

5 The fact that the government could have charged the
6 crimes together is neither here nor there. It didn't. And
7 even if it had, I suspect the charges would have been severed
8 and treated separately because the conduct has nothing to do
9 with one another. So the fact of the matter is, he went to
10 trial on the Nike case first, was convicted, sentenced, and
11 under the guidelines, that warrants three points. And I see no
12 basis to reduce it in light of that record.

13 Does either counsel believe that there are any other
14 grounds for a departure that is within the meaning of the
15 guidelines and as distinct from what has become known as a
16 variance?

17 Mr. Baum?

18 MR. BAUM: No, your Honor.

19 THE COURT: Mr. Podolsky?

20 MR. PODOLSKY: No, your Honor.

21 THE COURT: All right. I've nevertheless considered
22 whether there's any other basis for a departure, again, within
23 the meaning of the guidelines, and find there are no grounds
24 that would justify a departure.

25 With that, I will hear first from counsel, then from

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1 Mr. Avenatti, and then from Mr. Brewster. Let me stress that I
2 have read your sentencing submissions, read them with care, and
3 I obviously also presided over a trial in this matter, so you
4 don't need to repeat things that you've already said to me in
5 writing and/or that I would already know. But that being said,
6 it's your opportunity to make arguments to me about what you
7 think is relevant for purposes of sentencing.

8 I would propose that counsel and Mr. Avenatti, if he
9 wishes, use the podium, and then you can unmask, if you wish.
10 But I'll hear first from the government.

11 Mr. Podolsky.

12 MR. PODOLSKY: Thank you, your Honor.

13 We have given some thought as to what would be useful
14 to the Court to hear today given your intimate knowledge of the
15 case, and, frankly, I think knowledge of the defendant -- more
16 than would be the case in many other trials where the defendant
17 did not represent himself.

18 I think one thing to note is that this is really the
19 conclusion, or substantially the conclusion of what, thanks to
20 the pandemic, has been about three years of investigating and
21 prosecuting this defendant for a litany of crimes. And I
22 thought I would emphasize one or two things that we observed
23 during the course of speaking with the victims and witnesses in
24 these cases.

25 And what I want to emphasize about this case is that

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1 when you strip away the -- I would say large personalities at
2 trial, some of the, I suppose, media aspects, it's a very
3 personal and somewhat sorry story.

4 One thing that really came through to us in
5 Ms. Daniels' testimony and in meeting with her is that she
6 really trusted Mr. Avenatti implicitly and deeply for a long
7 period of time -- as she should. He was her attorney, and I
8 think he was involved in her life in a very intimate way. And
9 it appears that he did good things for her for a certain period
10 and, certainly, she believed so.

11 The second thing that we really observed in her
12 testimony and in meeting with her is the incredible pride that
13 she took in her book and telling her story, and that the money
14 from that book meant a great deal to her, both emotionally and
15 financially. She testified about the feeling of pride that she
16 had when she received her first payment and actually spoke
17 immediately with her lawyer, Mr. Avenatti.

18 There was also testimony and text message evidence
19 about what she was going to do with the later payments;
20 primarily to finance having her own home so she could move out
21 from the home she shared with her ex-husband at the time.
22 Again, something that she shared with Mr. Avenatti, telling him
23 about the house she wanted to buy.

24 And so you can, I think, imagine and saw during the
25 trial the incredible personal betrayal that happened when she

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1 found out that for a period of eight months, her lawyer,
2 Mr. Avenatti, had not only stolen her money but lied to her
3 over and over again.

4 And the guidelines talk about abuse of trust. I think
5 that's an apt phrase here. The only reason that Mr. Avenatti
6 was able to get away with a, frankly, somewhat cockamamie
7 scheme for such a long time is because Ms. Daniels trusted him.
8 She absolutely believed he was working for her and that he
9 would not lie to her. And so did Mr. Janklow and Ms. Beier,
10 who were also working with Ms. Daniels. And they trusted
11 Mr. Avenatti because of his personal relationship with
12 Ms. Daniels but also because he's an attorney.

13 Many jokes and ideas in popular culture about trusting
14 or not trusting attorneys, but people do trust their attorney,
15 and Ms. Daniels certainly did here. And it's absolutely
16 critical in our society that people do trust their attorneys.
17 We saw really much the same type of abuse of trust in the Nike
18 case with his client, Gary Johnson, and that is really what
19 these cases are about.

20 We do say in our sentencing submission that we think a
21 guideline sentence of 65 to 75 months would be harsh. But we
22 also think that, effectively, a mandatory minimum sentence, the
23 sentence of the minimum that Congress would permit, as, in
24 substance, requested by the defendant, would not be sufficient
25 in this case. And it would not be because just punishment,

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1 punishment for this type of betrayal and deterrence for
2 Mr. Avenatti, and particularly for other attorneys, would not
3 be served by a mandatory minimum sentence in this case.

4 With that, your Honor, we're happy to answer any
5 questions but would rest on our submission.

6 THE COURT: I guess the only question I have, and it
7 may be that I should give you an opportunity to speak after
8 Mr. Baum, is just if you want to speak to the search condition
9 recommended by probation, or if you would prefer to wait and
10 hear what Mr. Baum has to say.

11 MR. PODOLSKY: I would. I suspect our position to be
12 to defer to the wisdom of probation on this, but perhaps we can
13 wait have to hear from Mr. Baum.

14 THE COURT: You wouldn't defer to my wisdom, just
15 probation?

16 MR. PODOLSKY: In terms of the recommendation, of
17 course we will defer to whatever the Court orders.

18 THE COURT: Okay. Thank you.

19 Mr. Baum, anything you wish to say? And do you want
20 to use the podium?

21 MR. BAUM: Judge, with the Court's permission, I'd ask
22 that you allow Ms. Giwa to make the presentation related to the
23 3553 factors for the Court to consider.

24 THE COURT: Let me pose in advance of that two things
25 Ms. Giwa might want to address: One is the search condition,

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1 whatever argument you wish to make on that front; but second,
2 and maybe more fundamentally is -- and I don't know if this is
3 a question for Ms. Giwa or Mr. Avenatti himself. But I wanted
4 to sort of press on the letter that Mr. Avenatti wrote to
5 Ms. Daniels that was included in the sentencing submission to
6 me.

7 I guess the question I have is whether and to what
8 extent it should be viewed as an acceptance of responsibility.
9 And putting aside the late part of it, whether it's too little,
10 indeed, and that's where -- let me stress that at trial,
11 Mr. Avenatti conceded that he had been dishonest with
12 Ms. Daniels, that he told her lies in various texts and e-mails
13 and calls, but argued that he was entitled to the money because
14 he had performed services for her under, again, some quantum
15 meruit type theory.

16 For the reasons I explained elsewhere and won't repeat
17 here, that was not a valid defense. It also, separate and
18 apart from its legal infirmity, defies belief that Mr. Avenatti
19 actually believed that at that time as opposed to it being a
20 post hoc, clever argument to be made at trial.

21 Mr. Avenatti is too experienced and is too skilled a
22 lawyer to simply think he can simply take Ms. Daniels' money
23 and lie to her. But the bottom line is that apologizing to her
24 for his, quote/unquote, failures doesn't mean that he is
25 accepting responsibility for the crimes for which he was

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1 charged. It may be that he is simply alluding to the
2 dishonesty that he's already acknowledged.

3 So I guess the question I have is, what is
4 Mr. Avenatti actually apologizing for? If the letter is
5 intended to apologize for what he's already apologized for at
6 trial and in his closing, I think, that he wasn't honest with
7 her, it strikes me as, indeed, being too little, and if not too
8 late as well.

9 If he is apologizing for having committed the crimes
10 that he was convicted of, then that is a different story. Now,
11 I recognize that this puts Mr. Avenatti in a bit of a bind that
12 he has stated his intention to appeal, and therefore may not
13 want to admit his guilt of the crimes charged. That's
14 obviously fine; that's his right. I'm not requiring that he
15 confess to the crimes. But if he doesn't, if he doesn't
16 acknowledge that he defrauded Ms. Daniels and stole her
17 identity, then he deserves no credit for accepting
18 responsibility beyond what he's already done at trial.

19 So, again, Ms. Giwa, you're welcome to address that.
20 Mr. Avenatti is welcome to address that when he speaks. I just
21 wanted to push a little bit on what he is accepting
22 responsibility for in that letter.

23 Ms. Giwa.

24 MS. GIWA: Your Honor, I would like to approach the
25 podium for my presentation. I just need a minute to speak to

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1 Mr. Avenatti.

2 THE COURT: Okay.

3 MR. BAUM: Judge, perhaps, at this point, Ms. Giwa was
4 not going to address the special condition. Should I address
5 it at this point and then allow Ms. Giwa to continue?

6 THE COURT: Yes, please.

7 MR. BAUM: Thank you.

8 As your Honor is aware, probation recommended a
9 special condition. It's a special condition related to search
10 of electronic devices. When I reviewed the special condition,
11 I certainly then looked into the guidelines issues related to
12 special conditions.

13 I point out first that probation gives no validation
14 or rationale for the imposition of the special condition. And
15 when I looked at the guidelines, I found that under
16 Guideline Section 5D1.3(d), which is entitled special
17 conditions, the specific special condition which probation
18 recommended is listed under Subdivision 7, sex offenses. And
19 probation took the exact language from 7(C), and that's the
20 recommendation they made. Clearly, Mr. Avenatti is not charged
21 with a sex offense.

22 I then did, as your Honor knows I'm apt to do, the
23 research related to special conditions in the Second Circuit.
24 I acknowledged that the Court has broad discretion to tailor
25 conditions of supervised release to the goals and purposes

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1 outlined in the guideline section I just mentioned. And,
2 certainly, the Court can impose a special condition but only –
3 only – where that special condition is reasonably related to
4 the factors set forth in 18 U.S.C. 3553(a), and, in addition,
5 if that special condition involves no greater deprivation of
6 liberty than is reasonably necessary and is consistent with
7 pertinent policy statements issued by the sentencing
8 conditions.

9 I cite the case of *United States v. Myers*, 426 F.3d
10 117, 124 (2d Cir. 2005), for the proposition that the district
11 court's discretion is not "untrammelled" and that the
12 Second Circuit will carefully scrutinize for unusual or severe
13 conditions. So my objection is that clearly the guidelines
14 recommend this condition in sex offenses, and probation offers
15 no validation why it should be imposed in this instance.

16 It also provides for an additional deprivation of
17 liberty, which is inconsistent with case law and the
18 guidelines. And we think on that basis, the Court should
19 reject this, unless probation comes back with a further
20 rationale for the imposition of this condition.

21 THE COURT: Okay. Thank you.

22 Mr. Podolsky, I will give you an opportunity, even
23 though you said you would defer to probation's wisdom.

24 Anything else you want to say on that?

25 MR. PODOLSKY: I'll say this, your Honor: First of

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1 all, the condition, to be clear, is that the devices would be
2 subject to search upon reasonable suspicion concerning a
3 violation of a condition of supervision. So it's not simply a
4 blanket provision to search on whim. I do think there is ample
5 evidence in the record of the defendant's repeated financial
6 crimes that would justify such a condition.

7 With that said, to be clear, we do defer to the wisdom
8 of the Court on this particular condition.

9 THE COURT: All right. Thank you. And do either of
10 you happen to know whether that condition was imposed as part
11 of Judge Gardephe's sentence? It's fairly standard.

12 MR. BAUM: Yes, Judge. We actually looked as soon as
13 we realized this was a condition we would like to contest.
14 Judge Gardephe did not impose that condition, and I believe it
15 was not recommended. Probation did not recommend it, and
16 Judge Gardephe did not impose it.

17 THE COURT: All right. Thank you.

18 Ms. Giwa.

19 MS. GIWA: Your Honor, before I really begin my
20 presentation -- can you hear me? Okay. I'd like to make an
21 introduction of sorts. Today in the court are Mr. Avenatti's
22 close friends. They are sitting in the second row right behind
23 me. These are people who have come to court to demonstrate
24 their support for Mr. Avenatti. They've been here with him
25 through the trial and will be with him going forward.

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1 As your Honor noted, we filed with our submission note
2 letters of support from Mr. Avenatti's family. They've been in
3 close communication with us. And although they couldn't be in
4 court today, the reason for that is largely due to COVID. Some
5 of them noted in their letters to you that they are
6 immunocompromised, and the pandemic makes travel to New York
7 City difficult. But I suspect they are eagerly anticipating
8 your decision today, and I expect they will be in touch with us
9 as soon as we leave here.

10 And so I raise that just to remind the Court that
11 although they are not physically present in support of
12 Mr. Avenatti, their support continues for him.

13 Your Honor, of course, as you know, we're asking for a
14 sentence of 36 months and one day. And as you noted, we
15 submitted quite a comprehensive sentencing letter, and I will
16 heed the Court's mandate and not repeat everything that's in
17 our letter. But I do think that some of the highlights are
18 worth discussing. And Mr. Avenatti also intends to address the
19 Court directly. When he addresses the Court, he will also
20 address the point that your Honor raised just moments ago, so
21 I'm going to leave that to him.

22 I hope, your Honor, that at the end of the
23 presentation in considering our written submission, letters of
24 support, and then having the opportunity to hear directly from
25 Mr. Avenatti that it will be clear why the sentence we're

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1 asking for is the reasonable and appropriate sentence here.

2 Your Honor, I'd like to begin just briefly by
3 discussing Mr. Avenatti's background. I'm not going to detail
4 the challenges of his childhood. Those were laid out quite
5 honestly and clearly in the presentencing report. But I think
6 it's fair to say that Mr. Avenatti had a very difficult
7 childhood. His family unit was very troubled. And even today,
8 he bears some of the scars of growing up in a family like that.

9 But I think the more remarkable consequence, the more
10 remarkable point to raise about how he emerged from that family
11 is that he developed an outstanding work ethic. He started
12 working when he was 15 years old, and he has worked every
13 single day until the day that he was arrested. He's now
14 51 years old.

15 His work ethic was made clear in all of the jobs he
16 held as a teenager that your Honor is you aware of, and also in
17 his academic performance. He put himself through college, he
18 put himself through law school, and he did that by himself
19 without the help of any family members. And he attended very
20 prestigious schools. And he had very high academic achievement
21 at the schools.

22 I think that one of the vignettes described in the
23 letter from Christine Carlin, his ex-wife, really captures
24 those early days in Mr. Avenatti's life. She describes the two
25 of them barely making ends meet. Mr. Avenatti was working a

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1 full-time job all day and then attending law school at night.
2 And I think that really captures the ethic that came out of his
3 family, out of his family circumstances I should say.

4 I think another remarkable consequence of
5 Mr. Avenatti's childhood was that he himself was committed to
6 creating a very stable and loving family. Your Honor
7 referenced the letters of support that were filed with our
8 submission, and I think they really are beautiful -- in
9 particular, the letter from Mr. Avenatti's daughters.

10 He has two daughters; one of them is in college, the
11 other is in high school, and he has a seven-year-old son. In
12 their letter to the Court, his daughters describe a childhood
13 that was filled with love and support from Mr. Avenatti and
14 also just a lot of fun. They described childhood activities,
15 going to the zoo, going to Build-A-Bear, and really engaging in
16 all of the normal activities of raising young children and
17 raising a family.

18 And Mr. Avenatti's daughters also speak to the fact
19 that Mr. Avenatti has been absent for the last few years. They
20 detail some of the things he's missed. He's missed their prom
21 photos, he missed graduations, he missed his daughter's dad's
22 day, father's day at her sorority in college. And they
23 acknowledge going forward he is going to miss all sorts of
24 things in their lives.

25 We're asking, your Honor, as you consider an

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1 appropriate sentence here, take into account both
2 Mr. Avenatti's childhood but also what he made of that
3 childhood and the family that he created out of that childhood.

4 Your Honor, I'd like to just shift gears and turn very
5 briefly to some of the conduct at issue here. I won't spend
6 much time on this. I won't discuss the issue of the costs and
7 services rendered. I understand that your Honor rejects the
8 arguments that we've made in our submission and that Mr. Baum
9 makes again today. But I do want to point out that the
10 relationship that Mr. Avenatti and Ms. Daniels had was quite
11 complicated. And Mr. Avenatti, really, in his representation,
12 was leaning on the adviser and the counselor part of being a
13 lawyer. He was there for Ms. Daniels all of the time. As
14 reflected, in part, by their constant text messages and as your
15 Honor noted at trial, it is undisputed the amount of work he
16 did for her.

17 He, as the government acknowledges, as Ms. Daniels
18 acknowledges, made a significant amount of money for her. He
19 provided her with a national platform, and he helped her
20 fulfill her lifelong dream of writing a book. And I raise that
21 because I think that that snapshot, that snapshot the Court saw
22 at trial, captures really the type of work that Mr. Avenatti
23 did for innumerable clients over the course of a 20-year
24 career. He's somebody who strived, dreamed of being a lawyer
25 from a very young age.

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1 On the eve of his high school graduation, his father
2 was downsized. And in witnessing the way that his father had
3 been treated by his employer, Mr. Avenatti was motivated to
4 pursue a career where he could fight for the underdog, and
5 that, in fact, is what he did.

6 He represented people who were vulnerable and elderly
7 and disabled. He represented people that are so often ignored
8 by society. And not only did he do that, but he did it
9 exceptionally well, and he won large settlements for clients.
10 He was able to reunite families. He counseled victims of
11 sexual assault. And his legal work was recognized again and
12 again by peers, his peers in the field.

13 And so after a career like that, the fact that
14 Mr. Avenatti will never practice law again is really tragic to
15 him. And he recognizes that that is the consequence. Losing
16 the only profession that he knows and that he loves is the
17 consequence of what's happened here, but it's still a reality,
18 and it's still a devastating fact for him.

19 And I raise the issue, this fact that Mr. Avenatti
20 will never again practice law, because I think it addresses
21 some of the concerns that the government has and the Court, I
22 suspect, has about the harm that Mr. Avenatti could cause to
23 clients. He will never again have clients. He will never
24 again represent people. The future harm contemplated just
25 doesn't exist. And I think it also addresses the concern that

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1 the government just raised about any deterrence.

2 Your Honor, I'm going to wrap up, but I'd like to just
3 discuss one final issue as it relates to Mr. Avenatti as a
4 lawyer.

5 The government has raised in their submission and
6 again today the issue of Mr. Avenatti abusing his position of
7 trust; that as a lawyer, he was trusted by Ms. Daniels and by
8 his clients, and he abused that. And they argue that a
9 substantial sentence is warranted because of that fact and also
10 to send a message to other lawyers about abusing your position
11 of trust, and I just want to first remind the Court that
12 Mr. Avenatti's position is accounted for in the guidelines.
13 There's a two-point enhancement that was applied. We made many
14 objections; we did not object to that. We certainly agree that
15 adjustment is appropriate here. In addition to that, your
16 Honor, the Court is mandated to consider other similarly
17 situated defendants, both in our district and outside of the
18 district.

19 In our written submission, we provided quite a
20 detailed list of other cases, other defendants, and the
21 sentences they received. I'm not going to repeat those here.
22 But I think what those cases illustrate is that the sentence
23 that we're seeking from your Honor, a sentence of 36 months and
24 one day, really falls squarely within the types of sentences
25 that people have received.

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1 In the cases we cited, a number of them involved
2 attorneys. All of the cases involved more victims, they
3 involved far greater loss than is at issue here, and despite
4 that, those defendants received the same sentence or very
5 similar sentences to the one that we're seeking. And so we,
6 again, submit that a sentence of 36 months really is a
7 reasonable sentence and is consistent with other sentences in
8 the district and outside the district.

9 Your Honor, clearly Mr. Avenatti is incarcerated.
10 He's currently serving a sentence, and further future
11 incarceration for him is a certainty. And so in light of that,
12 in light of his personal history and his background, in
13 consideration of all of the mitigating factors that we've
14 raised, including the work that he did for Ms. Daniels, the
15 work he's done for other clients, the fact that he will never
16 again be a lawyer, never again represent clients, and in
17 considering all of the comparative sentences that we've raised,
18 we're asking the Court to impose a sentence of 36 months and
19 one day.

20 And with the Court's permission, the last thing I'd
21 like to do is just read into the record a statement made by
22 Judge Rakoff, your colleague in the Southern District, and his
23 sentencing in *United States v. Adelson*.

24 Judge Rakoff wrote, "Surely, if ever a man is to
25 receive credit for the good he has done and his immediate

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1 misconduct assessed in the context of his overall life
2 hitherto, it should be at the moment of his sentencing, when
3 his very future hangs in the balance. This elementary
4 principle of weighing the good with the bad, which is basic to
5 all the great religions, moral philosophies, and systems of
6 justice, was plainly part of what Congress had in mind when it
7 directed courts to consider as a necessary sentencing factor
8 the history and characteristics of the defendant."

9 Thank you, your Honor.

10 THE COURT: Thank you. Just two quick questions
11 before you sit down and then turn to Mr. Avenatti. The
12 government seeks forfeiture and restitution; \$297,500 in
13 forfeiture, and there's a proposed order to that effect, I
14 don't know if you have seen, and restitution for which I didn't
15 get a proposed order, but in the amount of \$148,750. Do you
16 have a position on either of those or any objection?

17 MS. GIWA: Could I have one moment, your Honor?

18 THE COURT: Sure.

19 (Pause)

20 MS. GIWA: Your Honor, with regards to the
21 restitution, we have no objection to that. We understand that
22 that is required under the statute.

23 With regards to the forfeiture, our only objection is
24 that it should also reflect the amount of the restitution, so
25 that it should be approximately \$148,000.

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1 THE COURT: Okay. Mr. Podolsky, do you want to just
2 address that? That is to the say to the extent Mr. Avenatti
3 did make Ms. Daniels whole for the third payment, why should
4 the forfeiture reflect that payment?

5 MR. PODOLSKY: Briefly, your Honor, that's how we
6 understand the statute to operate. Both payments constitute or
7 are derived from proceeds traceable to the commission of said
8 offense. And under 18 United States Code Section 981(a)(2)(A),
9 in cases involving illegal activity, forfeiture is not limited
10 to the net gain or profit. So we think the full amount stolen
11 is subject to the forfeiture, even when returned, a portion was
12 returned -- or not returned, but replaced to Ms. Daniels.

13 THE COURT: All right. And Ms. Giwa or Mr. Baum, do
14 you have any authority to the contrary?

15 MR. BAUM: No, your Honor.

16 THE COURT: All right. Mr. Avenatti, if you wish to
17 speak before I impose sentence, this is your opportunity to do
18 so. You're welcome to use the podium as well, and once there,
19 to remove your mask.

20 THE DEFENDANT: Your Honor, there is no doubt that I
21 made a series of mistakes and exercised poor judgment. I own
22 the conduct for which I was convicted. I'm accountable for it
23 and deserve just punishment. I stand by the sincerity of my
24 letter to Ms. Daniels. I have brought embarrassment and
25 ridicule upon myself and innocent third parties, including my

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1 family, my children, my friends, and the legal profession.

2 Some have forgiven me; many – most – never will. I

3 disappointed scores of people and failed in a cataclysmic way.

4 Because of my actions, I will never practice law

5 again. I will forever be branded a "disgraced lawyer" and

6 worse. I will never have the honor and privilege of appearing

7 in a court like this as an advocate, never have the honor and

8 privilege of representing those who need an advocate and a

9 fighter the most. I will never again experience the thrill of

10 delivering justice for someone who thought there was no justice

11 and believed they had no chance. I have destroyed my career,

12 my relationships, and my reputation, and have done collateral

13 damage to my family and my life.

14 There is serious doubt as to how, or if, I will every
15 recover any semblance of a normal life or peace. Much has been

16 said and written about me, my life, and my conduct. Some true,

17 much false. I respectfully ask that your Honor take into

18 account and consider my background and my life as a whole when

19 imposing a sentence. I ask that the Court consider all of the

20 good work I did across two decades, long before that fateful

21 day in February 2018 when I first agreed to meet Ms. Daniels.

22 During this time period, I represented the underdogs,

23 and I gave those who had no chance a fighting chance. I took

24 on the clients and the causes that no one else would touch.

25 And I was blessed enough to deliver over a billion dollars in

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1 verdicts and settlements for those clients in courts across the
2 country. Oftentimes, I took no fee.

3 Those cases included representing thousands of Jewish
4 families whose loved ones' remains had been dug up and
5 scattered in a mass grave in Los Angeles. Some of whose family
6 members were Holocaust victims. I was able to obtain an
7 \$85 million settlement, a settlement valid at \$85 million, to
8 provide them some peace.

9 I represented thousands of doctors and nurses who had
10 been sold defective PPE that placed their lives at risk.
11 Because of my work in that case, tens of thousands of defective
12 surgical gowns were removed from the national stockpile of the
13 United States in 2017. That work saved lives in light of the
14 subsequent COVID pandemic. My work in that case also led to
15 the Department of Justice obtaining a \$20 million criminal fine
16 within the last 12 months against the manufacturer of those
17 gowns.

18 I represented a grieving mother who lost her
19 16-year-old son, Michael, to an opioid overdose facilitated by
20 a rich and powerful celebrity.

21 I represented thousands of investors who were
22 victimized by a \$200 million Ponzi scheme. I recovered
23 millions of dollars for those clients so they would not lose
24 everything and be destitute.

25 I represented numerous sexual assault victims of

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1 Robert Kelly, R. Kelly, including by assisting prosecutors and
2 Homeland Security agents from the Northern District of Illinois
3 and the Eastern District of New York while out on bail in this
4 case.

5 I represented a 21-year-old young woman who was raped
6 by a hotel employee while celebrating her mother's birthday in
7 Palm Springs while out on bail in this case. My work allowed
8 her to move on with her life.

9 I represented a Guatemalan family who witnessed and
10 heard 12 family members burned to death in a passenger van
11 after it went off an Arizona road, had its fuel tank rupture,
12 and burst into flames.

13 I reunited over 70 children with their families after
14 they were stripped from their parents at our southern border.
15 This included a young boy by the name of Anthony, a
16 ten-year-old who I personally was able to get released to my
17 custody by agreeing to personally fly him back to Guatemala. I
18 did so and witnessed him, once again, experience his mother's
19 embrace in what I considered to be the greatest accomplishment
20 of my legal career.

21 There are literally hundreds of other clients that I
22 helped across the years. And I was fortunate enough to receive
23 many awards and a lot of recognition for my work and dedication
24 to the little guy.

25 Your Honor, I am not suggesting that this work excuses

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1 away my conduct at issue in this case, because it does not.
2 But it does reflect the reality of my career, my life, my
3 values, and the sum of who I am as a man.

4 The government and others claim, your Honor, that I
5 took on Ms. Daniels as a client for fame and to gain a national
6 platform. This is entirely untrue. I agreed to represent
7 Ms. Daniels because she, at the time, was an underdoing and was
8 desperate for someone to represent her because no one else
9 would. Nobody at the time, me included, could have predicted
10 the success we would have and the notoriety that would follow.
11 Nobody.

12 To be clear, I agreed to represent Ms. Daniels because
13 no one else had the guts to take her case, and I believed we
14 could take down a sitting U.S. president who was the single
15 biggest threat to American democracy in modern times.

16 Your Honor, I took on her causes for all of the right
17 reasons. And the success that followed was the result of
18 thousands of hours of work and 24-hour/7 dedication of my
19 client and her causes, not just by me, but others at my firm.
20 It was not through luck or mere happenstance. My
21 representation of Ms. Daniels and her numerous legal matters
22 was all-consuming for me and my firm. Her matters demanded
23 constant attention.

24 There are less than five attorneys living in America
25 today who have any real insight into how much representing a

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1 client in a situation like that costs: personally, emotionally,
2 financially, and professionally. People who think it was so
3 glamorous and think I benefited so handsomely are mistaken.
4 Me, my family, and the others at my firm made huge personal
5 sacrifices for Ms. Daniels and her causes throughout 2018, and
6 we did so for all of the right reasons.

7 Again, your Honor, I do not offer this as an excuse
8 for what I have been convicted of. I merely offer it to the
9 Court so that the Court may consider the totality of my
10 representation of Ms. Daniels.

11 I also respectfully ask that your Honor take into
12 consideration the horrific conditions I experienced during my
13 incarceration at MCC as found by Judge Gardephe. It has never
14 been explained why I was subjected to solitary confinement in
15 10 South, a six-cell unit that is considered the highest
16 security pretrial facility in the United States, reserved for
17 terrorists and those who allegedly are national security
18 threats against this country. No one has ever explained why I
19 was cut off from the world and placed under 24-hour
20 surveillance in a cell next to known terrorists who had cost
21 American lives.

22 I was born in this country, have lived in this country
23 my entire life, and love the United States of America. During
24 the first 48 years of my life, I was never arrested and had no
25 history of violence against anyone. I should have never been

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1 subjected to the torture of 10 South.

2 For decades, your Honor, I was a contributing member
3 of society and a good, loving man. I know that I can be that
4 once again if given the chance.

5 Thank you, your Honor.

6 THE COURT: Thank you, Mr. Avenatti.

7 Mr. Brewster, if you want to step forward I'll hear
8 from you now.

9 MR. BREWSTER: Your Honor, my name is Clark Brewster,
10 and I represent Stormy Daniels and have since February 17,
11 2018. It was my letter written on February 19 outlining the
12 crimes that Mr. Avenatti was indicted for in this district that
13 put in motion this case.

14 I want to commend the prosecutors in the
15 Southern District, specifically Matt Podolsky and
16 Robert Sobelman. They really proved that the system works.
17 They took a person that was very manipulative, deceitful, and
18 exposed the truth. It was a simple truth, the chronology, and
19 the events and the forgery were obvious once disclosed to me,
20 at least, and to them. But it's been a hard fight over the
21 last three years to get to this point. And it approves our
22 system works.

23 I don't know who Mr. Avenatti includes in the five
24 people in the U.S. that could take on Ms. Daniels' case, but I
25 believe I would have been one of them and have done so.

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1 To be an attorney, especially a trial lawyer, the
2 desire to step up and champion another's cause who's in the
3 hole or in the worst circumstances of their life is very noble.
4 You receive their confidences, you counsel their decisions, you
5 are their advocate. You stand up and deliver their voice. You
6 obtain their trust. They give you reliance, and they brag to
7 their friends and family about how good you are as their
8 advocate, and they vest in you the belief in our justice system
9 because you are their champion. And that was Mr. Avenatti's
10 pitch, and he was able to persuade Ms. Daniels to that
11 particular position that he held. It's a high calling.

12 But they become very vulnerable because when you
13 deceive them, mislead them, steal from them, it's with
14 disbelief. They couldn't believe that would occur, and they
15 become the most vulnerable person to perpetrate crimes against.
16 And that's what Mr. Avenatti did and thought that he could just
17 take Ms. Daniels' money and either lie his way out of it or
18 convince her that he was entitled to it.

19 But you stop and think. When you look at a criminal
20 act that gives rise to a prosecution, a conviction,
21 incarceration, many times it's a single decision someone makes
22 out of desperation, maybe out of mistaken belief of protecting
23 another, and that may lead to a criminal act. But in this
24 case, Mr. Avenatti engaged in a series of deceit, lies,
25 scheming, not just lying to Ms. Daniels, but to others, and,

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1 ultimately, to disguise his theft and embezzlement. He had to
2 turn on her and make the others that she'd be communicating
3 with, the publishing company and the agent, believe that she
4 was incredible when she called or to not take her calls.

5 So not only did he deceive her and steal her money,
6 the champion that he was and had her confidence, but then he
7 went into a series of lies to third parties and also
8 disparagement of her to make sure that she won't be believed.
9 It is truly shocking, because I believe strongly in our legal
10 system but also the advocacy --

11 MR. BAUM: Your Honor, I really need to object.

12 It is appropriate for Mr. Brewster to provide the
13 statement of the victim; it is not appropriate for Mr. Brewster
14 to provide his personal statement as to his beliefs, to provide
15 statements as to his own experience as an attorney. He can
16 read, he can relate what Ms. Daniels wants, but he has gone far
17 beyond that. I have the greatest respect for Mr. Brewster, but
18 I think at this point his statements are objectionable.

19 THE COURT: Okay. Thank you, Mr. Baum, I think
20 Mr. Baum's point is somewhat well taken. The Crime Victims'
21 Rights Act certainly gives Ms. Daniels a reasonable right to be
22 heard. You're here on her behalf and making a statement on her
23 behalf, but why don't you stick to her statement and leave
24 yourself out of it?

25 MR. BREWSTER: Thank you, your Honor. I'm getting to

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1 the point where the circumstance where her and I have discussed
2 these crimes being committed against her and just the complete
3 loss of disbelief that she had and just overwhelming impact it
4 had on her life.

5 She suddenly had this person that she would repose all
6 trust in jerked out from under her, from her reliance, and also
7 he became the perpetrator of crimes against her. And I'm just
8 trying to convey that.

9 One thing I would also say is that he virtually left
10 her abandoned. I mean, she had cases in Texas that he failed
11 to enter an appearance. I hear about all the good work he had
12 done. He had filed a case against President Trump for
13 defamation in California against her wishes. She said that
14 from the stand. And as a matter of fact, he lost and had a
15 \$292,000 attorneys' fee award against her and failed to timely
16 appeal it. The appeal ran out in January before she learned of
17 his deviousness. He failed to appeal that, and so she was
18 stuck with \$292,000 in attorneys' fees, which we're dealing
19 with now.

20 He put her in a position where not only was she
21 victimized by his criminal conduct in the embezzlement scheme
22 but also completely left her. They also talk about his great
23 legal work. In Ohio, he filed a case. Didn't get admitted pro
24 hoc, failed to name the proper parties --

25 MR. BAUM: Judge, again, this is not Ms. Daniels'

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1 statement, this is Mr. Brewster's.

2 THE COURT: I got it, Mr. Baum. I will take it for
3 whatever weight it's worth and only on behalf of Ms. Daniels,
4 but I do think this is responsible to arguments you've made and
5 with respect to the quality or nature of the representation of
6 Ms. Daniels. So, Mr. Brewster, you may continue.

7 MR. BREWSTER: Thank you. And I'm just telling you
8 what pieces she had to pick up. And when you hear the
9 presentation that he's this great lawyer and he did all the
10 great work, it just isn't true.

11 As a matter of fact, he didn't timely appeal the
12 verdict in California. He didn't name the proper parties in
13 Ohio. And when Ms. Daniels came to me, he had no files. Not a
14 single file on any case. There were cases in Texas, Ohio, and
15 California, two of them. Not a single file on any matter that
16 he provided. And we reached out to try to get any work that he
17 had. There was nothing. It was just complete abandonment. So
18 to talk about how great a champion he was is really kind of
19 offensive to her.

20 I last want to say that Ms. Daniels went through a
21 lot. I mean, she came to New York on every occasion she needed
22 to to present and meet with the prosecutors. She was
23 absolutely involved in this case from the beginning, truthfully
24 forthcoming in every respect. She couldn't be here today, but
25 this day will be tremendously resolving for her with regard to

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1 her involvement with Mr. Avenatti, and I urge the Court to
2 follow the guidelines in this case at the highest level.

3 Thank you.

4 THE COURT: Thank you. All right.

5 Counsel, is there any reason why sentence should not
6 be imposed at this time?

7 MR. PODOLSKY: No, your Honor.

8 MR. BAUM: No, your Honor.

9 THE COURT: In imposing sentence, I'm required to
10 consider the factors set forth in 18 U.S. Code, Section
11 3553(a). Given how long we've been going, I won't recite them
12 in full, but suffice it to say that I have and will consider
13 all seven of the statutory factors. And, ultimately, my task
14 is to impose a sentence that is sufficient but no greater than
15 necessary to advance the purposes of sentencing set forth in
16 subsection (a)(2) of the statute; namely, to reflect the
17 seriousness of the offense, to promote respect for the law and
18 to provide just punishment for the offense, to afford adequate
19 deterrence to criminal conduct, to protect the public from
20 further crimes of the defendant, and to provide the defendant
21 with needed education or vocational training, medical care, or
22 other correctional treatment in the most effective manner.

23 Now, let me start by saying that I think this is in
24 many respects a tragic, sad, or to use Mr. Podolsky's word,
25 sorry case. To read the sentencing materials and presentence

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1 report, and especially the letters from Mr. Avenatti's
2 daughters and his ex-wife and ex-siblings in law, it is
3 certainly clear to me that there is more to Mr. Avenatti than
4 the conduct that led to his legal troubles may suggest.

5 They do reveal a thoughtful and hardworking person
6 devoted to his family and his clients. And, moreover, I think
7 it's clear from his record in law school, his earlier legal
8 career, not to mention his handling of trial in this case -- as
9 much as I took issue with some of his conduct at trial -- that
10 he is quite smart and has formidable legal skills.

11 So the question is, what happened? What led him
12 astray? What changed that caused Mr. Avenatti to use his
13 intelligence and formidable legal skills, not for good, not for
14 his clients' interest, but for his own. I don't know the
15 answer to that question. I don't know if that moment occurred
16 before Mr. Avenatti met Ms. Daniels or whether in meeting her
17 he saw her as a ticket to fame, power, and fortune for himself
18 and decided to pursue those things to the exclusion of his
19 principal obligations. Only Mr. Avenatti knows what led him
20 from a healthy ambition, driven by his childhood circumstances,
21 to the blind ambition that I think led him to the conduct that
22 he stands before me to be sentenced for. What led him from
23 fighting for his clients to brazenly lying to and stealing from
24 them, indeed, to defaming them, both privately and publicly,
25 when they had the audacity to confront him for his crimes?

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1 So the question is, what is the appropriate sentence?
2 Let me start by saying that I agree with both parties and the
3 probation department that a guideline sentence would be
4 unreasonable; that is that it would be greater than necessary
5 to serve the purposes of punishment set forth in subsection
6 (a)(2) of the statute.

7 I come to that view, in part, based on the sentences
8 that are referenced in the defense submission but also, in
9 part, because I agree that the guidelines at issue here results
10 in an unreasonably harsh sentence. That is not only because
11 Section 2B1.2 of the guidelines gives undue weight of the loss
12 amount but because loss amount here, arguably, is overstated
13 for reasons that I'll explain in a moment. I don't mean that
14 within the meaning of the guidelines, as I've already
15 indicated, but I think it's hard to imagine Mr. Avenatti's
16 intent and conduct at issue here was simply to take
17 Ms. Daniels' money as his own and never give it to her. That
18 would make no sense whatsoever. To use Mr. Podolsky's word, it
19 would be a cockamamie scheme because, at some point, his
20 conduct would have caught up with him, and it would have been
21 revealed.

22 Instead, I think it's clear that what was going on is
23 that out of desperation, in a moment where Mr. Avenatti needed
24 money to make ends meet, he saw Ms. Daniels' funds as a source
25 of a way of doing that, that he took them for himself, but with

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1 the intention, ultimately, of finding other sources, other
2 funds to pay her back. In other words, I think his plan was
3 not so much to steal the money outright as it was to deprive
4 her temporarily of her funds, though, obviously, he never did
5 pay her back the fourth book payment.

6 In any event, the bottom line is I share the view of
7 probation and the government, not to the mention the defense
8 that five-plus years on top of what Mr. Avenatti already
9 received in the Nike case would be an unreasonable sentence.

10 That said, I do think that Mr. Avenatti's conduct
11 warrants a substantial sentence and marginal sentence, if you
12 will, above the mandatory minimum of two years for Count Two,
13 because it was so brazen and egregious. He did, as
14 Mr. Podolsky stressed and Ms. Giwa conceded, abuse a position
15 of trust and breach the highest duty that a lawyer owes to his
16 client, the duty of loyalty, and did so in a despicable way, by
17 brazenly stealing from Ms. Daniels, then lying to her face, and
18 then defaming her when she called him on his conduct.

19 And I think in many respects it's clear that he did so
20 because he viewed that he took advantage of really a vulnerable
21 victim, is that his texts and e-mails with Mr. Janklow, for
22 example, made clear that Mr. Avenatti thought he could get away
23 with it because people would believe him over Ms. Daniels,
24 given her unorthodox career and somewhat unorthodox beliefs.

25 For these reasons, I think a substantial sentence is

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1 warranted to reflect the seriousness of his conduct, to promote
2 respect for the law, it is also warranted by the need for
3 adequate deterrence, both general and specific. I do think
4 that this case will send a message to lawyers and others in the
5 legal profession that if you go astray in the way that
6 Mr. Avenatti did, you will pay a steep price, not only in
7 losing your right to practice your profession, but also in
8 losing your liberty.

9 And, finally, I gave Mr. Avenatti an opportunity to
10 elaborate on his acceptance of responsibility, and it's 2 and
11 noteworthy to me that he didn't really elaborate. That is to
12 say I pressed on what he was acknowledging and confessing in
13 that letter, and he didn't address it. And given that, I do
14 view that letter as too little, too late. It certainly comes
15 too late, and it's too little in the sense I have no idea
16 whether he is acknowledging that he committed the crimes and
17 defrauded Ms. Daniels or simply acknowledging what he
18 acknowledged at trial, which is that he lied to her, which is
19 indisputable and obviously condemnatory in its own way.

20 All that leads me to the conclusion that the four-year
21 sentence recommended by probation, 30 months of which should be
22 consecutive to the sentence imposed in the Nike case, would be
23 at appropriate sentence here in my view. It would not give
24 adequate weight to the wire fraud conviction, to run that
25 sentence completely concurrent with the sentence in the Nike

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1 case, and to do so, as the defense suggests and probation has
2 recommended, I think would make for a lower sentence than the
3 comparable sentences that are referenced in the defense
4 submission.

5 At the same time, to run the sentence completely
6 consecutive to the sentence imposed in the Nike case,
7 particularly, when the sentence for Count Two must be imposed
8 to run consecutive would, in my view, result in an unduly harsh
9 and unreasonable sentence overall.

10 Ultimately, the right balance, in my view, is a
11 partially concurrent and partially consecutive sentence – in
12 essence, to give Mr. Avenatti an additional 30 months of
13 imprisonment on top of what he has already received and may
14 receive in California in the event he is convicted there.

15 So I will now state the sentence I intend to impose.
16 And, Mr. Avenatti, I ask you to please rise.

17 Mr. Avenatti, it is the judgment of this Court that
18 you are remanded to the custody of the Bureau of Prisons for a
19 total of 48 months. That is four years; and more specifically,
20 24 months on Count One and 24 months on Count Two with
21 18 months of the sentence on Count One to be served
22 concurrently with the sentence in 19 CR 373 and six months to
23 be served consecutive to that sentence, to be followed by the
24 24 month mandatory consecutive sentence on Count Two. That
25 term is to be followed by a period of three years of supervised

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1 release on Count One and one year of supervised release on
2 Count Two, to be served concurrently.

3 During your term of supervised release, you will be
4 subject to the mandatory conditions set forth on Pages 29 and
5 30 of the presentence report; that is, you shall not commit
6 another federal, state, or local crime; you shall not illegally
7 possess a controlled substance; you shall refrain from any
8 unlawful use of a controlled substance and submit to one drug
9 test within 15 days of your release on supervised release and
10 at least two periodic drug tests as determined by probation;
11 you shall cooperate in the collection of DNA as reflected by
12 probation; and you shall satisfy your financial obligations
13 that I will discuss shortly.

14 In addition, the standard conditions of supervised
15 release, which are set forth on Pages 30 and 31 of the
16 presentence report and will be set forth in the judgment shall
17 apply. Among other things, you shall not possess a firearm or
18 destructive device, and you shall report to the probation
19 office in the judicial district where you are authorized to
20 reside within 72 hours of your release from custody.

21 Finally, you must meet the following special
22 conditions. These are set forth on Page 31 of the presentence
23 report. The first is the search condition. I do find that it
24 would be reasonably related to Mr. Avenatti's conduct here.
25 Whether or not in the guidelines, it is listed as a special

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1 condition for sex offenses. I think given the nature of
2 Mr. Avenatti's conduct in this case and the Nike case, it is
3 appropriate that where reasonable suspicion concerning a
4 violation of the condition of supervised release or unlawful
5 conduct is found, probation have the right to search, among
6 other things, his electronic communications. And the record in
7 this case is replete with Mr. Avenatti's use of texts and
8 WhatsApp messages and the like to commit the crimes for which
9 he was convicted.

10 Given that, you shall submit your person and any
11 property, residence, vehicle, papers, computer, other
12 electronic communication, data storage devices, Cloud storage
13 or media, and effects to a search by any United States
14 Probation Officer, if needed, with the assistance of any law
15 enforcement. Such a search is to be conducted only where there
16 is reasonable suspicion concerning violation of a condition of
17 supervised release or unlawful conduct. Failure to submit to a
18 search may be grounds for revocation. And you shall warn any
19 other occupants that the premises may be subject to search
20 pursuant to this condition. Any search shall be conducted at a
21 reasonable time in a reasonable manner.

22 You will participate in an outpatient treatment
23 program approved by the United States Probation Office, which
24 program may include testing to determine whether you have used
25 drugs or alcohol. You must contribute to the costs of services

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1 rendered based on your ability to pay and the availability of
2 third-party payment. And I authorize the release of available
3 drug and alcohol treatment evaluations and reports, including
4 the presentence investigation report, to the substance abuse
5 treatment provider.

6 Unless you have satisfied your financial obligations,
7 which I'll discuss in one moment, you shall provide the
8 probation officer with access to any requested financial
9 information, and you shall not incur any new credit charges or
10 open additional lines of credit without the approval of your
11 probation officer unless you have satisfied your financial
12 obligations.

13 Finally, you shall be supervised in the district of
14 your residence.

15 I will not impose a fine because I find that
16 Mr. Avenatti would not have the ability to pay a fine at
17 present between his current financial circumstances. It would
18 interfere with his restitution payments. On that score, it is
19 the further judgment of the Court that you are to pay
20 restitution in the amount of \$148,750 in accordance with
21 18 U.S. Code Section 3663(a) payable to the clerk of this court
22 for disbursement to Ms. Daniels. I will waive the requirement
23 of interest under Section 3664(f)(3).

24 In light of your financial circumstances, if you are
25 engaged in a BOP non-UNICOR work program, you shall pay \$25 per

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1 quarter towards the restitution penalties. However, if you
2 participate in the UNICOR program as a Grade 1 through 4, you
3 shall pay 50 percent of your UNICOR earnings toward the
4 criminal financial penalties consistent with BOP regulations at
5 28 CFR Section 545.11.

6 The restitution shall be made in monthly installments
7 of 15 percent of gross monthly income over the period of
8 supervision to commence 30 days after your release from
9 custody, and you are to notify the Court and the probation
10 office of any material change in your economic circumstances
11 that might affect your ability to pay restitution.

12 I'm also imposing mandatory special assessment of \$100
13 per count for a total of \$200, which shall be due and payable
14 immediately.

15 And, finally, I order you to forfeit to the
16 United States \$297,500, which represents the proceeds that you
17 obtained, directly or indirectly, as a result of your criminal
18 activity.

19 Does either counsel know of any legal reason why this
20 sentence should not be imposed as stated?

21 Mr. Podolsky?

22 MR. PODOLSKY: No, your Honor.

23 MR. BAUM: No, your Honor.

24 THE COURT: Sentence as stated is imposed. I find the
25 sentence is sufficient but no greater than necessary to satisfy

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1 the sentencing purposes set forth in Section 3553(a)(2),
2 including the need to promote respect for the law. To provide
3 just punishment for the offense, to afford adequate deterrence
4 to Mr. Avenatti and to others, and to protect the public from
5 further crimes of the defendant.

6 That's where, Mr. Avenatti, I hope that the days of
7 further crimes are over and that when the day comes, when you
8 have served your time from this case, the Nike case, and in the
9 event you're convicted in the California case, from that case,
10 that you put your formidable talents to better use as you did
11 in the years that you led you to this courtroom.

12 I acknowledge that there are ways in which you have
13 done good in the world and on behalf of your clients, and that
14 is part of the reason I think a below-guideline sentence is
15 appropriate. I agree with you that sentence should take
16 account, not just of your conduct in this case, but who you are
17 as a person. And as I said, it is clear to me that who you
18 were as a person is certainly more than the conduct that landed
19 you here. So I hope when the time comes and you get out, that
20 you can use your skills, even if you can't do so in a
21 courtroom, that do you so to make the world a better place, to
22 help your daughters, to help your son, to help yourself, but
23 that you don't do anything that could land you back in front of
24 me or in any other courtroom as a defendant -- a criminal
25 defendant for that matter.

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1 Mr. Baum, are there any requests for a designation
2 location?

3 MR. BAUM: Yes, there is, your Honor.

4 We'd ask that you recommend that Mr. Avenatti be
5 designated to FPC Sheridan, which is in Oregon, and closer to
6 his family and residence.

7 And we also ask, Judge, he was ordered to make
8 restitution in the Nike case, and your Honor just ordered him
9 to make the restitution within 30 days after his release in
10 this case. So he would effectively be required to make double
11 restitution, a significant portion of any earnings, and we ask,
12 because Nike was imposed first, that you order that the
13 restitution is to be made after he completes the restitution in
14 the Nike case.

15 THE COURT: All right. So, first of all, to be clear,
16 I didn't say he had to pay restitution within 30 days. It was
17 just that --

18 MR. BAUM: No. The restitution would begin, payments,
19 within 30 days after his release, which is the same order he
20 received in the Nike case.

21 THE COURT: Mr. Podolsky.

22 MR. PODOLSKY: We have no objection, your Honor.

23 Candidly, in the Nike case, Nike had actually
24 requested their restitution follow restitution in any future
25 case, but I believe Judge Gardephe determined he wasn't able to

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1 do that, and I'm not honestly sure that there's a way to
2 organize that now. So I don't think we have a position on this
3 request, your Honor.

4 THE COURT: All right. And what was the restitution
5 amount in the Nike case?

6 MR. PODOLSKY: I don't have the exact figure. I
7 believe it was a few hundred thousand dollars to account for
8 Nike's costs and expenses.

9 MR. BAUM: I believe it was \$259,000.

10 THE COURT: All right. Well, I think it is a
11 reasonable request, so I will grant that request and say that
12 restitution payments, again, in the amounts that I indicated
13 are to begin once the restitution is made in the Nike case, and
14 that seems reasonable. I'll also recommend to the Bureau of
15 Prisons that he be designated to -- was it FCI Sheridan?

16 MR. BAUM: That's correct, Judge. Judge Gardephe also
17 made the same recommendation.

18 THE COURT: Yes. I'm looking and seeing that now. So
19 I'll make that recommendation.

20 You can be seated.

21 Mr. Podolsky, I don't think there are any open counts
22 to be dismissed; is that correct?

23 MR. PODOLSKY: That's correct, your Honor, although
24 for the record, we're happy to say we move to dismiss any open
25 counts there may be.

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1 THE COURT: All right. Any open counts there may be,
2 I'm not sure of any, are dismissed at this time.

3 Let me advise you, Mr. Avenatti, that to the extent
4 that you have a right to appeal, any notice of appeal must be
5 filed within 14 days of entry of the judgment of conviction.
6 And if you cannot afford to pay the cost of an appeal, you may
7 file for leave to appeal in forma pauperis.

8 Before I ask if there's anything else from the
9 parties, I would be remiss if I didn't acknowledge that
10 Mr. Baum is in the final days of a storied 50-year career as a
11 Federal Defender in this district. And over the course of
12 those decades, he has served his clients, including
13 Mr. Avenatti, and this Court extraordinarily well. And I just
14 wanted to acknowledge, Mr. Baum, I commend you on your service
15 to the bar, to this Court, to Mr. Avenatti, to your other
16 clients, and wish you well.

17 MR. BAUM: Thank you, Judge.

18 THE COURT: All right. Is there anything else from
19 the government?

20 MR. PODOLSKY: No, your Honor.

21 THE COURT: Mr. Baum, is there anything else from the
22 defense?

23 MR. BAUM: Yes, judge.

24 As your Honor is aware, he's going to be returned to
25 California so that he may prepare for trial, and your Honor

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1 ordered that he be returned as expeditiously as possible. Is
2 it possible that you would also order that he be returned to
3 the same location he came from, which is Terminal Island?
4 Because that's where all his legal papers and other work is.
5 We're just concerned that he may be returned elsewhere.

6 THE COURT: All right. That makes sense to me. And I
7 will convey to the Marshal that I think he should be returned
8 from where he came in order to prepare for trial. I have no
9 idea what goes into that. I can't imagine the intention was to
10 do otherwise, but I'll convey that to the Marshal.

11 MR. BAUM: Thank you, your Honor.

12 THE COURT: All right. We stand adjourned. Thank you
13 very much.

14 (Adjourned)